

16-70410

ROSEMARY MERGENTHALER

3 Wood Edge Court
Water Mill, NY 11976
561-302-1850 fax 631-283-7919
pmergenthaler@hotmail.com

To:
Honorable Arthur G. Pitts, Justice
New York Supreme Court, Suffolk County
1 Court Street
Riverhead, NY 11901

April 12, 2016

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CLERK
U.S. BANKRUPTCY
DISTRICT OF
EASTERN NEW YORK

Re. *Osekavage v. Mergenthaler* - Index No. 29626/2011
**Request for Leave to File Motion Vacating This Court's
March 1 2016 Order Denying Defendants' alleged Motions
Seq. #21 & #22, and March 17 2016 Order Denying
Defendants' alleged Motion Seq. #16**

Dear Justice Pitts:

The undersigned is Rosemary Mergenthaler, a defendant *pro se* in this proceeding.

May it please the Court to review its two latest Orders respectively dated March 1, 2016 denying Defendants' alleged Motions Seq. # 21 & #22, and March 17, 2016 denying Defendants' alleged Motion Seq. #16 [*See, EXHIBIT 1: Copies of Orders*]

On their faces, the Orders denied Defense concerned **alleged** Motions on the ground that movants were not granted prior leave to file them, a judicial statement of fact that is materially and outrageously untrue and erroneous.

Indeed, a simple objective review of defendants' total packages of alleged Motion Sequences #16, #21 and #22 would reveal immediately that they are not Motions but only: **"Request(s) for Leave to File New MOTION (...) in Compliance with this Court's February 26 2015 Order Requiring Prior Court Leave to Filing of Motions in This Court by Defendants."** [Emphasis added]

It is of note that to said Request Defendants annexed for the Court's convenience a true copy of Defendant's a **proposed: NOTICE OF MOTION (...)** together with a **Certificate in Support of this Application** in compliance with this Court's February 26 2015 Order Requiring Prior Court Leave to Filing of Motions. [See, EXHIBIT 2]

Finally, in further support of Defendants' *"Request for Leave to File Motion in compliance with this Court's February 26 2015 Order Requiring Prior Court Leave to Filing of Motions,"* the applicant submitted the **original of the entire package** so that the Court could at its convenience hand it to its Court Clerk Office for filing purpose. [A True Copy Sample of Defendants' latest Request for Leave is annexed hereto for judicial convenience as EXHIBIT 2]


Viewing the foregoing, it is absolutely unmistakable that this Court's Orders denying defendants' (ALLEGED) Motions for being filed without prior court leaves as required by this Court's February 26 2015 Order Requiring Prior Court Leave to Filing of Motions is **erroneous and must be vacated** under various appropriate Sections of the CPLR, in that undisputedly the Court has treated defense Requests for Prior Leave to file Motions as Motions being filed without prior leave to file.

Defendants' recent inquiry to the Court Clerk Office has disclosed the most outrageous fact that indeed the Court has never read defense said request(s) and has simply denied them without reviewing them at all with the outrageously incorrect and false explanations that they are Motions being filed without having first being granted leave to file.

Viewing the foregoing, may the Court now act *sua sponte* and look into this matter and grant defendants appropriate measures of justice under our constitutional right to due process.

Thank you, your Honor, for your attention and consideration.

Respectfully Submitted,



Rosemary Mergenthaler

To:

Hon. Robert E. Grossman
U.S. BANKRUPTCY COURT
EDNY - COURTHOUSE
100 Federal Plaza
Central Islip, NY 11722

U.S. Trustee
United States Trustee
Long Island Federal Courthouse
Central Islip, NY 11722-4437

R. Kenneth BARNARD, Esq.
Chapter 7 Trustee
3305 Jerusalem, Suite 215
Wantagh, NY 11793

Nicholas C. Ricano, Esq.
LaMonica Herbst & Maniscalco, LLP
3305 Jerusalem Ave. Ste. 201
Wantagh, NY 11793

Denise Mitchell
Legal Secretary
L'Abbate, Balkan, Colavita & Contini, L.L.P.
1001 Franklin Avenue
Garden City, NY 11530

Melisa B. Levine, Esq.
Gold Benes LLP
Attorneys for Dean Osekavage
1854 Bellmore Avenue
Bellmore, NY 11710

Mark A. Cuthbertson, Esq.,
Receiver of 3 Wood Edge Court, Water Mill, NY
434 New York Avenue
Huntington, NY 11743

Roger D. Olson (RO-0493)

Attorney for Estate of Judith Wetzstein
370 Lexington Ave., Suite 1703

AFFIDAVIT OF SERVICE

Peter Mergenthaler, being duly sworn deposes and says:-

I am defendant *pro se* herein. I reside at 3 Wood Edge Court, Water Mill, NY 11976.

On April 12, 2016, I serve by First Class Mail the true copies of the instrument herein upon:

Hon. Robert E. Grossman
U.S. BANKRUPTCY COURT
EDNY - COURTHOUSE
100 Federal Plaza
Central Islip, NY 11722

U.S. Trustee
United States Trustee
Long Island Federal Courthouse
Central Islip, NY 11722-4437

R. Kenneth BARNARD, Esq.
Chapter 7 Trustee
3305 Jerusalem, Suite 215
Wantagh, NY 11793

Nicholas C. Ricano, Esq.
LaMonica Herbst & Maniscalco, LLP
3305 Jerusalem Ave. Ste. 201
Wantagh, NY 11793

ALAN C. STEIN, ESQ.
7600 Jericho Turnpike, Suite 308
Woodbury, New York 11797

Denise Mitchell
Legal Secretary
L'Abbate, Balkan, Colavita & Contini, L.L.P.
1001 Franklin Avenue

Garden City, NY 11530

Melisa B. Levine, Esq.
Gold Benes LLP
Attorneys for Dean Osekavage
1854 Bellmore Avenue
Bellmore, NY 11710

Mark A. Cuthbertson, Esq.,
Receiver of 3 Wood Edge Court, Water Mill, NY
434 New York Avenue
Huntington, NY 11743

Roger D. Olson (RO-0493)
Attorney for Estate of Judith Wetzstein
370 Lexington Ave., Suite 1703

David S. Rubin, Esq.
140 Fell Court, Suite 303
Hauppauge, NY 11788

Gabrielle Weglein, Esq.
Post Office Box 711
Hampton Bays, NY 11946

Sworn to before me this
12th day of April, 2016

Peter Mergenthaler
3 Wood Edge Court,
Water Mill, NY 11976

EXHIBIT No. 1

3-17-16

SHORT FORM ORDER

INDEX NO: 29626/11

Supreme Court of the State of New York
IAS Part 43 - County of Suffolk

PRESENT: Hon. ARTHUR G. PITTS

**DEAN OSEKAVAGE D/B/A
PATHFINDERS USA AS ASSIGNEE OF
JUDITH WETZSTEIN,**

Plaintiff,

- against-

**PETER MERGENTHALER and
ROSEMARY MERGENTHALER,**

Defendants.

ORIG. RETURN DATE: 7-23-15

ADJOURNED DATE: 3-17-16

MOTION SEQ. NO.: 016-MD

PLTF'S/PET'S ATTY:

GOLD BENES, LLP

1854 BELLMORE AVENUE

BELLMORE, NY 11710

DEFT'S/RESP'S ATTY:

LAW OFFICE OF ALAN C. STEIN, P.C.

7600 JERICHO TPKE., SUITE 308

WOODBURY, NY 11797

PETER MERGENTHALER

3 WOOD EDGE COURT

WATER MILL, NY 11976

PETER MERGENTHALER

P.O. BOX 692

WATER MILL, NY 11976

ROSEMARY MERGENTHALER

3 WOOD EDGE COURT

WATER MILL, NY 11976

ROSEMARY MERGENTHALER

P.O. BOX 692

WATER MILL, NY 11976

MARK A. CUTHBERTSON, ESQ. - Receiver

434 NEW YORK AVENUE

HUNTINGTON, NY 11743

Upon the following papers numbered 1 to 27 read on this motion stay proceedings
Notice of Motion and supporting papers 1-25 Notice of Cross-Motion and supporting papers _____
Affirmation/affidavit in opposition and supporting papers 26-27 Affirmation/affidavit in reply and supporting papers _____ Other _____
: (and after hearing counsel in support of and opposed to the motion) it is,

ORDERED that defendants Peter Mergenthaler and Rosemary Mergenthaler's motion for an order staying the above captioned matter or in the alternative, vacating their default pursuant to CPLR 5015 (a) (3) is denied.

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By written order of this Court dated February 26, 2015, the defendants were directed to not submit any further motions on this matter without obtaining prior written permission from the Court. That directive was verbally reiterated to both defendants on the record when they appeared in court on March 19, 2015 with two new motions they had made returnable that day. Both motions were denied for not having written permission to make them. It is further

ORDERED that if the defendants continue to move for any further relief without written permission of this Court, all available sanctions will be considered, including contempt.

This shall constitute the decision and order of the Court.

So ordered.

Dated: Riverhead, New York
March 17, 2016



ARTHUR G. PITTS, J.S.C.

CHECK ONE: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

SHORT FORM ORDER

INDEX NO: 29626/11

Supreme Court of the State of New York
IAS Part 43 - County of Suffolk

RECEIVED MAR 07 2016

PRESENT: Hon. ARTHUR G. PITTS

DEAN OSEKAVAGE D/B/A
PATHFINDERS USA AS ASSIGNEE OF
JUDITH WETZSTEIN,

Plaintiff,

- against-

PETER MERGENTHALER and
ROSEMARY MERGENTHALER,

Defendants.

ORIG. RETURN DATE: 10-15-15
ADJOURNED DATE: 3-1-16
MOTION SEQ. NO.: 021-MD
022-MD

PLTF'S/PET'S ATTY:
GOLD BENES, LLP
1854 BELLMORE AVENUE
BELLMORE, NY 11710

DEFT'S/RESP'S ATTY:
PETER MERGENTHALER - Pro Se
3 WOOD EDGE COURT
WATER MILL, NY 11976

PETER MERGENTHALER - Pro Se
P.O. BOX 692
WATER MILL, NY 11976

ROSEMARY MERGENTHALER - Pro Se
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WATER MILL, NY 11976

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P.O. BOX 692
WATER MILL, NY 11976

MARK A. CUTHBERTSON, ESQ. - Receiver
434 NEW YORK AVENUE
HUNTINGTON, NY 11743

Upon the following papers numbered 1 to 78 read on this motion punish for contempt & declaratory judgment
Notice of Motion and supporting papers 1-33; 34-57 Notice of Cross-Motion and supporting papers _____
Affirmation/affidavit in opposition and supporting papers 58-61 Affirmation/affidavit in reply and supporting papers 62-63; 64-66; 67-74; 75-78 Other _____; (and after hearing counsel in support of and opposed to the motion) it is,

ORDERED that defendant Rosemary Mergenthaler's motions under separate notices, for a preliminary injunction staying Receiver Mark A Cuthbertson, Esq. from evicting the defendants from 3 Wood Edge Court, Water Mill, New York, vacating all judgments entered against the defendants and in the plaintiffs favor, and relieving Receiver Cuthbertson, as well as, a myriad of other indiscernible relief,

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are denied. By written order of this Court dated February 26, 2015, the defendants were directed to not submit any further motions on this matter without obtaining prior written permission from the Court. That directive was verbally reiterated to both defendants on the record when they appeared in court on March 19, 2015 with two new motions they had made returnable that day. Both motions were denied for not having written permission to make them. It is further

ORDERED that if the defendants continue to move for any further relief without written permission of this Court, all available sanctions will be considered, including contempt.

This decision will be the third notice to the defendants that they must have written permission from the court to bring any further motions.

This shall constitute the decision and order of the Court.

So ordered.

Dated: Riverhead, New York
March 1, 2016


J.S.C.

CHECK ONE: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

EXHIBIT No. 2

**SUPREME COURT OF THE STATE OF
NEW YORK – COUNTY OF SUFFOLK**

SUPREME COURT

2016 MAR 28 PM 4: 14

Dean Osekavage D/B/A Pathfinders USA as
Assignee of Judith Wetzstein,
Plaintiffs
against
Peter Mergenthaler and Rosemary Mergenthaler,
Defendants

Index No. 29626/2011

**SECOND SUPPLEMENTAL
NOTICE OF APPEAL**

Notice is given that Rosemary Mergenthaler and Peter Mergenthaler, Defendants *pro se*, hereby appeal to the New York Supreme Court, Appellate Division, Second Department, from the following Orders:

(1) Final Order dated **March 1, 2016** filed on March 7, 2016 with the Clerk Office of the Court, and served **without** Notice of Entry upon Defendants-Appellants by Plaintiff-Respondent on or about March 11, 2016 electronically. This order appears to be issued by Honorable Arthur G. Pitts, J.S.C., and a true copy of the copy being served is annexed hereto. This Order denies Defendant Rosemary's Motion Sequence # 021-MD and Motion Sequence #022-MD.

(2) Final Order dated **March 17, 2016** filed on March 17, 2016 with the Clerk Office of the Court, and served **without** Notice of Entry upon Defendants-Appellants by Plaintiff-Respondent on or about March 24, 2016 electronically. This order appears to be issued by Honorable Arthur G. Pitts, J.S.C., and a true copy of the copy being served is annexed hereto. This Order denies Defendant Rosemary's Application for Leave to Stay Proceeding pending adjudication of Motion Sequence # 016-MD.

Water Mill, New York, March 26, 2016

Rosemary MERGENTHALER, Appellant *pro se*
3 Wood Edge Court, Water Mill, NY 11976

Peter MERGENTHALER, Appellant *pro se*
3 Wood Edge Court, Water Mill, NY 11976